

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: NOTICE OF GENERATION SITING WAIVER REQUESTS	DOCKET NO. RMU-03-16
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ORDER ADOPTING RULE MAKING

(Issued February 5, 2004)

Pursuant to the authority of Iowa Code §§ 17A.4, 476A.1, 476A.2, and 476A.15, the Utilities Board (Board) adopts the amendment to the Board's administrative rules attached hereto and incorporated by reference. The amendment adds a new sentence to the end of 199 IAC 24.15 that provides for notice to adjoining landowners of requests for waiver of the electric generation siting requirements in Iowa Code Chapter 476A and 199 IAC 24. The reasons for adopting this amendment are set forth in the attached notice of intended action.

IT IS THEREFORE ORDERED:

1. A rule making proceeding, identified as Docket No. RMU-03-16, is adopted.

2. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin a notice in the form attached to and incorporated by reference in this order.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 5th day of February, 2004.

UTILITIES DIVISION [199]

Notice of Intended Action

Pursuant to Iowa Code sections 17A.4, 476A.1, 476A.2, and 476A.15, the Utilities Board (Board) gives notice that on February 5, 2004, the Board issued an order in Docket No. RMU-03-16, In re: Notice of Generation Siting Waiver Requests, “Order Adopting Rules.” The Board is adopting an amendment to 199 IAC 24.15(476A) to provide that notice be given to adjoining landowners of record of waiver requests involving the electric generation siting statute, Iowa Code chapter 476A.

The rule making was initiated in response to a recent waiver proceeding before the Board. The applicant requested a waiver pursuant to § 476A.15, of the siting statutes with respect to a 90 MW peaking facility in Audubon County. Two families that owned land adjoining the proposed facility contested the waiver request. Those two families were not served by the applicant with notice of the waiver, but became aware of the request through their own investigation. The proceeding highlighted the necessity of providing adjoining landowners with notice of such waiver requests. (Western Minnesota Municipal Power Agency, “Proposed Decision and Order” and “Order Affirming Proposed Decision and Order,” Docket No. WRU-03-19 (8/20/03, 9/17/03)). Prior to adoption of this amendment, generally only the Consumer Advocate Division of the Department of Justice was required to be served with notice.

On November 24, 2003, the Board issued an order in Docket No. RMU-03-16 to consider the new amendment. Notice of Intended Action for the proposed rule making was published in IAB Vol. XXVI, No. 13 (12/24/03) p. 1123, as ARC 3064B. One or more sets of written comments were filed by the Consumer Advocate Division of the Department of Justice, MidAmerican Energy Company (MidAmerican), Interstate Power and Light Company, and Missouri River Energy Services. An oral presentation was held on January 27, 2004. All commenters except MidAmerican supported the proposed rule as noticed.

MidAmerican maintained that the rule should contain an exception to the notice requirement if the site for the facility is not known when the waiver request is filed. The Board will not include such a provision because it would encourage a waiver applicant to delay “final” site selection until after the waiver request is filed, negating the notice requirement. The Board notes that in the unusual event the site is not known prior to filing the request, the applicant can request a waiver of the notice requirement pursuant to the Board’s general waiver provision in 199 IAC 1.3.

MidAmerican argued that the Board might not have the authority to waive the notice requirement because it is a “precondition” to granting a waiver of the siting statutes. However, no legal authority was cited for this proposition. The Board believes its general waiver authority is sufficient to allow it to waive any of its rules, if the applicant satisfies the standards contained in 199 IAC 1.3. In addition, lack of notice to adjoining landowners has due process implications, and inability to provide this notice because a final site has not been selected should be subject to review in a waiver proceeding before the Board. Depending

on the particular fact situation, one option would be to require notice to landowners adjoining each potential site.

Because the amendment is adopted as originally noticed, no additional notice is required. As alluded to above, no separate waiver provision is necessary because the Board's general waiver provision is applicable to this rule.

This amendment is intended to implement Iowa Code section 476A.15 and will become effective on April 7, 2004.

The following amendment is adopted.

Amend rule 199—24.15(476A) as follows

199—24.15(476A) Waiver. The board, if it determines that the public interest would not be adversely affected, may waive any of the requirements of this chapter. In determining whether the public interest would not be adversely affected, the board will consider the following factors:

1. The purpose of the facility.
2. The type of the facility.
3. If the facility is for the applicant's own needs.
4. The effect of the facility on existing transmission systems.
5. Any other relevant factors.

In addition to other service requirements, the applicant must serve a copy of the waiver request on all owners of record of real property that adjoins the proposed facility site.

February 5, 2004

/s/ Diane Munns

Diane Munns
Chairman